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Chairman: Mr. Mitsopoulos (Vice-Chairman) ..... (Greece)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Saha

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In the absence of Mr. Yousfi (Algeria), Mr. Mitsopoulos (Greece), Vice-Chairman, took the Chair.

The meeting was called to order at 10.10 a.m.

Agenda item 128: Administration of justice at the United Nations (A/61/71, A/61/205, A/61/342 and A/61/815)

1. **Mr. Sach** (Controller) recalled that the General Assembly, in section IV of its resolution 59/283 on administration of justice at the United Nations, had requested the Secretary-General to comment on the recommendations in the report of the Redesign Panel on the United Nations system of administration of justice (A/61/205), and to provide an estimate of the time and resources needed for their implementation. Accordingly, he wished to introduce the note by the Secretary-General on the report of the Redesign Panel (A/61/758).

2. The rationale for the first fundamental overhaul of the Organization's internal justice system in nearly 60 years was the Redesign Panel's unanimous conclusion that the existing system was outmoded, dysfunctional, ineffective and lacking in independence. The Secretary-General's comments reflected the Redesign Panel's observations and proposals and the agreements resulting from a week-long session of the Staff-Management Coordination Committee (SMCC). The Organization must establish a reliable justice system because it required a means of recourse for its staff, who had no access to national courts for employment-related grievances; because it must set an example, in view of its mandate to promote the rule of law; because its zero-tolerance policy towards misconduct demanded high standards of responsibility and accountability from staff, with swift and fair action if those standards were not met; and because the current system of administration of justice, designed for several thousand staff based mostly at Headquarters, must be updated to cope with 55,000 staff, half of whom were in the field.

3. The existing system's main deficiencies were its reliance on an under-resourced peer-review mechanism consisting of joint appeals boards and joint disciplinary committees that depended on the voluntary participation of staff and managers; the length of time taken for a case to proceed from an initial administrative decision to a final judgement; the over-centralized and time-consuming nature of proceedings, which made it virtually impossible to hold individual decision makers accountable; and insufficient encouragement to settle disputes rapidly.

4. The Secretary-General shared the view of the Redesign Panel that the new system of administration of justice should be professional, independent and decentralized, and agreed with most of the Panel's recommendations. In particular, efforts should be made to resolve disputes informally before they escalated into litigation. Management evaluation of administrative decisions should precede any recourse to the formal system of justice. That step — endorsed by SMCC on the understanding that it would entail the provision, by an independent unit within the Department of Management, of a reasoned response within 45 days to staff requesting an evaluation — would replace the current process of administrative review and would make managers more accountable for their actions. Robust accountability measures should accompany the management evaluation to ensure that the performance of managers was properly monitored. The new formal system of justice should be fundamentally different from its predecessor, with the current voluntary advisory bodies replaced by a professional first-instance United Nations Dispute Tribunal whose decisions would be binding and appealable by either party to a new United Nations Appeals Tribunal.

5. After consulting managers and staff, the Secretary-General had proposed that first-instance cases should be considered not by a single judge sitting in five separate locations, as the Redesign Panel had recommended, but rather by panels of three judges sitting in Geneva, Nairobi and New York and able to travel, when necessary, to Latin America and Asia. That alternative approach was consistent with the need for cases to be considered by judges from more than one cultural and legal background and with the practice of administrative tribunals of other international organizations. Agreeing with the Redesign Panel that the Panel of Counsel was under-resourced and reliant on part-time or voluntary, often unqualified, assistance, the Secretary-General proposed that offices to provide staff with legal assistance should be established in all the main duty stations and that training regarding the internal justice system should be provided.

6. The Secretary-General supported the Redesign Panel's recommendation to establish a five-member Internal Justice Council to compile lists of candidates,

who would be appointed by the Secretary-General in the case of the Dispute Tribunal and by the General Assembly in the case of the Appeals Tribunal. Use of such an advisory body would be consistent with the practice of other international organizations and would help ensure the quality and objectivity of judges' decisions. The Secretary-General recognized the importance of providing adequate remedies for all individuals providing the Organization with personal services, including consultants and individual contractors, who were not covered by the current system. As the Secretary-General and the staff felt that disciplinary proceedings should be discussed further, a joint staff-management working group would be established to review investigation and disciplinary procedures in the Organization. Furthermore, the creation of a clear framework for cooperation with the Office of Internal Oversight Services and the internal justice system would be examined. The General Assembly would be kept informed of any concrete proposals which emerged.

7. The financial implications of the Secretary-General's recommendations, which were based on the Redesign Panel's proposals and had been modified by SMCC, were contained in annex III to his note (A/61/758), and would entail allocating approximately $37.6 million from the proposed programme budget for 2008-2009. Swift, fair, predictable and independent justice was obviously costly, but the current system was also costly and, in many cases, time-consuming and ineffective. Approximately $10.6 million in existing resources from the proposed programme budget for 2008-2009 would be redeployed, and costs would be shared on the basis of workload, with the United Nations funds and programmes. Some costs would be borne by the three largest peacekeeping missions, to which justice staff would be assigned. Every effort had been made to keep costs to a minimum; the new system would require approximately 130 staff to meet the needs of approximately 90,000 personnel deployed throughout the world.

8. Further justification for significantly changing the existing system could be found in two other reports before the Committee: the report of the Secretary-General on the administration of justice in the Secretariat: outcome of the work of the Joint Appeals Board during 2004 and 2005; and statistics on the disposition of cases and work of the Panel of Counsel (A/61/71) and the report of the Secretary-General on the administration of justice in the Secretariat: implementation of General Assembly resolution 59/283 (A/61/342). The Committee should look beyond the significant sums involved in redesigning the system of justice to the issues at stake: due process, fairness, professionalism and equality, all of which existed in national judicial systems. The proposals should be seen as an integrated package balancing early informal dispute settlement with a professionalized two-tier formal system. The Organization had been improvising for too long, to the detriment of all parties concerned. A new system would improve managers' accountability and professionalism, and make the staff more committed and better able to meet the demands of their workplace.

9. **Ms. Durrant** (Ombudsman), introducing the report of the Secretary-General on the activities of the Ombudsman (A/61/524), covering the period from 1 September 2005 to 31 August 2006, said that the establishment of her Office in 2002 had for the first time provided staff in all locations with a dedicated mechanism for the resolution of employment-related conflicts, based on the guiding principles of confidentiality, independence, impartiality and neutrality. The Office was encouraged to note that, in its five years of activity, staff at all levels had embraced the concept of informal dispute resolution. Furthermore, the Redesign Panel had noted the Office's potential as an alternative dispute-resolution institution which, with expansion, integration and decentralization, could unify the currently disparate and overlapping informal dispute resolution processes and provide a valuable complement to the formal justice system.

10. In accordance with its terms of reference, as set out in Secretary-General's bulletin ST/SGB/2002/12 of 15 October 2002, the Office could respond rapidly, without prior formalities, and take a flexible approach to investigations, thus preventing conflicts from escalating. As the informal process was not adjudicative, parties were often willing to cooperate in finding solutions which took account of the interests of all those involved. The staff of the Office had been externally certified as mediators; in that connection, it had noted the Redesign Panel's proposal to establish a Mediation Division. Also in accordance with its terms of reference, the Office could comment on policy, procedure and practice, contributing to the

development of a fair and equitable workplace and a culture of managerial excellence and accountability.

11. In line with the requests made by the General Assembly in its resolution 59/283, the Office was continuing to expand its outreach activities, particularly to local, national and General Service staff, and had visited five peacekeeping missions during the reporting period. However, as the Office's resources were limited, such visits reduced the number of visits to offices away from Headquarters. It was therefore urgent to fill the three chief-of-branch positions approved by the General Assembly under the programme budget for 2006-2007. During the reporting period, the number of new cases had averaged about 50 per month; more cases had been initiated by staff in the field, including national staff; more men than women had initiated cases, chiefly because of the larger demand from peacekeeping missions; most cases had concerned promotions and inter-personal issues; and more staff members had returned to the Office for guidance after their cases had been resolved. The Office took the view that it should open new cases for those returning for further advice, in order to reflect its actual workload more accurately.

12. The Office had made much progress in implementing many of the key proposals and recommendations in the first report of the Secretary-General on the activities of the Ombudsman (A/60/376). They included mission readiness, enforcement of the zero-tolerance policy, review of contractual arrangements, orientation for staff members, leadership and management training and a stronger conflict-resolution system. Continued efforts were needed to make better use of the Performance Appraisal System (PAS), to enhance mobility and career development for staff recruited through national competitive examinations and to improve medium- and long-term support for staff members who had suffered psychological trauma while in the service of the Organization.

13. Since its inception, the Office had promoted a culture of evaluation of all aspects of its work. It had benefited greatly from the recommendations of two Review Panels composed of outside experts specializing in alternative dispute resolution. A further external evaluation would be undertaken before the end of the current Ombudsman's term in July 2007, and its results would be reflected in the Office's next report to the General Assembly.

14. Standard operating procedures had been developed and shared with the network of ombudsmen and mediators in the United Nations system and Bretton Woods institutions; they would be used in all future branches of the Office of the Ombudsman to ensure consistency. The Office also held regular meetings with representatives of other offices in the conflict-resolution system. However, much remained to be done to remove all barriers to staff members' access to the Ombudsman's services, regardless of their location or occupational category. That could only be achieved by decentralizing services and establishing regional branches, as proposed as far back as 2003. The men and women who had dedicated themselves to upholding the ideals of the Organization deserved nothing less than a justice system which reflected those ideals.

15. **Mr. Saha** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the Advisory Committee's report on the report of the Redesign Panel on the United Nations system of administration of justice and on the related note by the Secretary-General (A/61/815), said that the Advisory Committee had noted the Secretary-General's agreement with most of the Redesign Panel recommendations and with most of the changes proposed by SMCC. However, the Secretary-General's comments did not cover all of the Redesign Panel recommendations, and further proposals and information were clearly required, particularly in the fields of disciplinary proceedings and cost-sharing. The Advisory Committee was not yet in a position to express a view on the specific staffing proposals which the Secretary-General had presented, whether from the point of view of staff numbers, grade structure or functions to be performed, or on resource requirements. Such views must await further decisions of the General Assembly on the system of internal justice. There were a number of issues which merited further examination or clarification or on which guidance should be sought from the Sixth Committee, particularly in areas in which the Secretary-General's proposals differed from those of the Redesign Panel.

16. The Advisory Committee had noted the Secretary-General's intention to revisit, at a later stage. the cost-sharing arrangements for the redesigned system of internal justice. However, before the new system was put in place, more effort should be made to identify and quantify the parameters underlying its

resource requirements, and the participating organizations should develop and agree upon more specific cost-sharing arrangements. There were no compelling reasons or impact analyses to support the proposal to widen the scope of the system to individuals not covered by the Staff Regulations and Rules. Should the General Assembly decide to consider that proposal, further in-depth examination would be necessary.

17. While the Advisory Committee saw merit in management evaluation to enable the Administration to redress faulty administrative decisions and avoid unnecessary litigation, it was concerned that the Secretary-General's current proposal to make the management evaluation unit part of the Department of Management would be perceived as a conflict of interest. Responsibility for management evaluation should not lie with those whose policies or decisions were under scrutiny. Recalling that the General Assembly, in paragraph 17 of its resolution 59/283, had requested the Secretary-General to transfer responsibility for formulating decisions on appeals from the Department of Management to the Office of the Secretary-General, the Advisory Committee recommended that the unit should be placed elsewhere in the Organization, for example, in the Executive Office of the Secretary-General.

18. The process of nominating and selecting ombudsmen and judges must be transparent, and qualification requirements must be met. Should the General Assembly decide to establish the Internal Justice Council recommended by the Redesign Panel, the Advisory Committee recommended that it should request the Secretary-General to prepare and submit for its consideration terms of reference and criteria for the selection of members. Noting the proposals of the Redesign Panel and the Secretary-General regarding the number of judges for the United Nations Dispute Tribunal, the Advisory Committee took the view that the Redesign Panel's proposal for a single judge provided enough safeguards to ensure that the law was properly applied, and remained unconvinced by the Secretary-General's proposal for a panel of three judges.

19. **Mr. Kiiamov** (President of the Coordinating Committee for International Staff Unions and Associations of the United Nations System) indicated that the delegation of staff unions at the current meeting represented staff in Beirut, Geneva, Nairobi, Santiago and Vienna, as well as international staff in peacekeeping operations. There was global support for the reform of the justice system. In early September 2006, the Coordinating Committee for International Staff Unions and Associations of the United Nations System (CCISUA) had fully endorsed the Redesign Panel's recommendations on the United Nations system of administration of justice. Representatives of CCISUA had also attended a special session of SMCC, at which productive discussions had been held with management. The proposals currently before the Fifth Committee represented an improvement on the original recommendations of the Redesign Panel.

20. The Redesign Panel had recommended that administrative review before action in the formal justice system should be abolished because it had proved ineffective, and SMCC had agreed with that view, but experience in the United Nations funds and programmes had shown that some form of management review could still be retained. A management evaluation process, with appropriate safeguards to hold managers accountable, would result in swifter action to address problems and fewer applications to the formal justice system, making the system more cost-effective.

21. Unless reform of the justice system provided for legal counsel, the goal of restoring the confidence of staff could not be met. For that reason, the establishment of an Office of Staff Legal Assistance had been proposed. Such a step was morally justified, had legal precedents (including the practice of the International Labour Organization Administrative Tribunal) and was financially prudent for the Organization. Reliance on external lawyers was inadvisable, as they tended to be more litigious and were unfamiliar with the Organization's rules and procedures.

22. The proposals currently before the Fifth Committee must receive full financial support. The Committee's endorsement would demonstrate that Member States wished to give the Organization a high-quality justice system to protect the rights of staff, serve the Organization's best interests and enable it to move beyond the problems of the past. The provision of funding would also show confidence in the staff-management consultation mechanism. Finally, the new internal justice system would materially improve the Organization's effectiveness, making it better able to meet Member States' needs.

23. **Mr. Kisambira** (President of the New York Staff Union) said that the Staff Union and its legal experts had taken note of the report of the Redesign Panel on the United Nations system of administration of justice (A/61/205) and that they fully supported the Panel's recommendations for a professional, independent internal justice system. Unfortunately, the note by the Secretary-General on the Panel's report (A/61/758), which had not been drafted by legal experts, had diluted the Panel's recommendations to ensure that the system would not be fully independent. The Staff Union had communicated its reservations regarding the Secretary-General's note to both the Advisory Committee and the Sixth Committee.

24. If the new internal justice system was to become fully functional by January 2008, a number of priority issues, including the appointment of the registrars and the establishment of the Internal Justice Council and the Office of Administration of Justice, would need to be addressed. According to the Panel's report, the Internal Justice Council would be responsible for monitoring the formal justice system and for compiling a list of eligible persons for each judicial position, which would then be submitted to the General Assembly. The Staff Union was of the view that the Internal Justice Council should also be responsible for receiving complaints, drafting the statute of the United Nations Dispute Tribunal and redrafting the Statute of the United Nations Administrative Tribunal. The Committee might wish to recommend that the Council should also be responsible for compiling a list of candidates for executive director of the Office of Administration of Justice.

25. To ensure the independence of the new system, the terms of reference and selection criteria of the Internal Justice Council should be drawn up by an independent panel or, better still, the Redesign Panel itself. The Staff Union urged the Committee to recommend that the Council should be set up immediately. Once the Council had compiled the list of nominees for each judicial position, it would not have to meet more than once every six months to monitor the system.

26. With respect to the appointment of registrars, the Staff Union agreed with the Redesign Panel that all registry staff should be appointed as staff of the United Nations. It further agreed that the principal registrar and registrars should be appointed only after consultation with the President of the United Nations Appeals Tribunal and the appropriate Dispute Tribunal judge.

27. Concerning the establishment of a professionalized Office of Counsel within the proposed Office of Administration of Justice, the Staff Union urged the Committee to consider expediting the establishment of the former so that it would become operational at the same time as the Office of Administration of Justice.

28. Implementing the new system at Headquarters first and then phasing it in at other duty stations and peacekeeping missions could be a way to expedite its establishment and reduce its initial cost. The Staff Union had noted that the Secretary-General had not provided separate estimates of financial implications based on the posts recommended by the Panel but rather had provided estimates based on counterproposals that included additional judges and locations. The Committee might therefore wish to request cost estimates based on the Panel's recommendations, as called for by the General Assembly in its resolution 59/283.

29. The Secretary-General had proposed that the current process of administrative review before action should be replaced by a "management evaluation". Although the name had changed, the latter was, in fact, just another form of administrative review and therefore an excuse to delay action. Managers should be given the opportunity to reconsider decisions adverse to staff, but they should do so while preparing for mediation or trial. The Committee might consider establishing a 14-day "cooling-off" period between the receipt of a complaint and the institution of proceedings. In order to maintain the integrity of the independent system, the "cooling-off" period should be written into the statute of the Dispute Tribunal and should be monitored by the registrar. If management required additional time, it could file an application with the judge.

30. The Redesign Panel had recommended that a standing panel on disciplinary matters should be established in all peacekeeping operations and offices away from Headquarters. The Staff Union urged the Committee to consider setting up a similar standing panel at Headquarters. It also pointed out that the Staff Regulations and Rules and administrative instructions would have to be amended with respect to disciplinary matters.

31. In conclusion, the Staff Union was of the view that the proposed internal justice system would prove to be a sound investment. It hoped that the Committee would support all the recommendations of the Redesign Panel.

32. **Mr. Hussain** (Pakistan), speaking on behalf of the Group of 77 and China, said that the Group regretted the late submission of the note by the Secretary-General on the report of the Redesign Panel (A/61/758). The late submission of reports was detrimental to the Committee's work and to the implementation of proposals to reform the internal justice system.

33. The Group shared the Redesign Panel's view that the current system of justice was outmoded, dysfunctional and ineffective and that it lacked independence. It should be replaced by a decentralized, professionalized system that was accessible to all staff members, including those working in the field. The Group also agreed with the Panel's recommendation that the new system should include a strengthened Office of the Ombudsman.

34. The Group supported the establishment of a two-tiered system comprising a first-instance decentralized tribunal composed of professional judges with power to make binding decisions. It agreed that the first-instance tribunal should replace existing advisory bodies, including the Joint Disciplinary Committees and Joint Appeals Boards, but not the rebuttal panels and Classification Appeals and Review Committees. The Group supported the recommendation that the United Nations Administrative Tribunal should be renamed the United Nations Appeals Tribunal and that its Statute should be amended to include a new appellate jurisdiction.

35. Given the broad powers envisaged for the judges of the Dispute Tribunal, it was imperative that the Organization should attract the best-qualified administrative law experts by offering them an appropriate grade level and compensation package. It was equally important to recruit competent programme managers, as many of the conflicts in the United Nations resulted from their decisions. The Group hoped that the ongoing human resources management reforms would ensure that managerial positions were occupied by highly qualified staff members who were held accountable for their administrative decisions. It also hoped that adequate resources would be allocated to inform field staff about the internal justice system. One of the first priorities of the human resources management reform should be to provide staff with information about the Staff Regulations and Rules and the available avenues of relief.

36. While the Group endorsed the general framework of the new system, a number of issues would need to be clarified in informal consultations. Those issues included management evaluation, the composition and competence of the Dispute Tribunal, the scope of the new justice system, procedures for appointing judges, the roles of the Internal Justice Council and the Panel of Counsel, disciplinary matters, class actions, specific performance, exemplary and punitive damages, the harmonization of the statutes of the United Nations Appeals Tribunal and the International Labour Organization Administrative Tribunal, transitional measures and the drafting of the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.

37. **Mr. Woeste** (Germany), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Montenegro and Serbia; and, in addition, Iceland, Liechtenstein, Moldova and Ukraine, said that the European Union welcomed the consensual outcome of the seventh special session of SMCC. Since internal justice was primarily a matter between staff and management, it was important that SMCC should remain involved.

38. The European Union shared the view of the Redesign Panel and the Secretary-General that the United Nations must establish an internal justice system that enjoyed the confidence of both staff and management. The new system should be professionalized and should be consistent with relevant rules of international law, the rule of law and due process. It should also provide adequate safeguards to ensure equal access to justice in all locations. The selection process for the Ombudsmen and judges must be rigorous, and both the formal and informal systems must be objective and independent.

39. Several components of the proposed reform were essential to its success: the new system of administration of justice should comprise both a formal and an informal system; the informal dispute settlement mechanism should be strengthened so that

as many grievances as possible could be addressed at the earliest stage; once an agreement had been reached through mediation, the parties should not be allowed to bring the same case in the formal system; the formal justice system should comprise a first-instance body and an appellate body; the new system should be decentralized in order to promote wider access to justice and facilitate the settlement of disputes; and the judges of both tribunals should have the qualifications and recognized competence necessary for appointment to high judicial office and should serve strictly in their personal capacity, while enjoying full independence.

40. A number of issues required further clarification, including the creation of disincentives for filing frivolous claims, the link between the new informal and formal systems, the operation of those systems in the funds and programmes, the provision of safeguards to ensure a smooth reform process, the extension of the new system to all persons performing personal services under contract with the Organization and the provision of legal assistance to staff, including the role of the staff unions in that regard.

41. In paragraph 26 of its resolution 59/283, the General Assembly had encouraged staff representatives to explore the possibility of establishing a staff-funded scheme that provided legal advice and support to the staff. The European Union would be prepared to discuss the implications of that resolution, as it formed the basis of the current reform proposals.

42. While the European Union was willing to take decisions on matters of general agreement, a completely new system could not be implemented immediately. Furthermore, some issues already fell within the managerial competencies of the Secretary-General. In that regard, the European Union would welcome the introduction of a new system of management evaluation of administrative decisions, with a clear, short deadline. That would strengthen the administration of justice during the interim period and demonstrate the commitment of the Secretariat and its managers.

43. **Ms. Molemele** (Botswana), speaking on behalf of the African Group, said that the General Assembly's adoption of resolution 59/283 demonstrated its recognition of the need to take a comprehensive approach to establishing a fair, independent and transparent system of justice. Member States had long demanded strengthened accountability in the Organization, most recently in General Assembly resolution 61/244.

44. The African Group welcomed the reports of the Redesign Panel (A/61/205) and the Secretary-General (A/61/758) and pointed out that the long-term sustainability of the new internal justice system depended on the level of confidence it enjoyed among both staff and management. The Group agreed with the Redesign Panel that the new system should place equal emphasis on informal and formal dispute settlement. It also fully agreed that there was a need for a well-resourced, professionalized system that relied on persons with relevant legal experience rather than staff volunteers; comprehensive training for all participants in the system; "equality of arms" in dispute settlement; and a decentralized, well-coordinated formal and informal system that resolved grievances expeditiously and was accessible to all staff, including those in the field.

45. The African Group appreciated the Secretary-General's personal commitment to the important issue of administration of justice and encouraged him to continue to seek the staff's views on all pending issues raised by the Panel. The Group trusted that Member States would provide early guidance so that the Secretary-General could proceed with the matters within his managerial competencies.

46. **Mr. Lithgow** (Dominican Republic), speaking on behalf of the Rio Group, said that the interactive debates between the Secretariat, the staff and the Redesign Panel were very useful, as they helped to elucidate the reform proposals. The internal justice system should be equipped with mechanisms that ensured its professionalism, independence and effectiveness and safeguarded due process and transparency. It was time to overhaul a system which had become obsolete and inefficient and had failed to align itself with international guarantees in the area of labour and administrative law.

47. The Rio Group considered the report of the Redesign Panel (A/61/205) to be a good basis for negotiations and had examined with interest the observations made in the note by the Secretary-General (A/61/758) and the report of the Advisory Committee (A/61/815). However, the late submission of documentation to the Committee was regrettable, as it could delay the implementation of the new system of administration of justice.

48. General Assembly resolution 59/283 provided a road map for changing the system, calling for both short- and long-term measures. Short-term measures should be considered in the context of the implementation of that resolution and the Secretary-General's related report (A/61/342), as it would be some time before the proposed reforms were fully implemented.

49. The Rio Group concurred with the Secretariat and the Redesign Panel that adopting a new decentralized and simplified system that guaranteed independence and transparency was a matter of priority. The Group was in favour of a system of administration of justice comprising a formal and an informal system. The Office of the Ombudsman would play a central role in the new system, as it would facilitate the adoption of decisions and help achieve procedural economy. The Group agreed that the formal system should comprise a first-instance tribunal and an appellate tribunal, composed of professional judges with power to make binding decisions. In addition, the Organization should improve the legal advice and assistance it provided to its staff. The reform of the system as a whole would also represent a unique opportunity to strengthen staff and management accountability.

50. The Rio Group supported the decision of SMCC to establish an intersessional working group on disciplinary matters. In peacekeeping missions, disciplinary matters should be dealt with by the competent authority in order to avoid duplication. The establishment of an Office of Administration of Justice, meanwhile, would be extremely useful for guaranteeing institutional independence. The Rio Group would work to ensure that the deliberations and decisions of the Fifth and Sixth Committees complemented each other, taking into account their different responsibilities and mandates.

51. As noted in the report of the Redesign Panel, the proposed reform would entail costs. However, the new system would also save time, ensure predictability and improve staff morale. The Rio Group was hopeful that a satisfactory outcome could be achieved during the first part of the resumed session.

52. **Mr. Hill** (Australia), speaking also on behalf of Canada and New Zealand, said that the Organization's staff members, its most important resource, were entitled to a fair and efficient internal justice system. The three countries therefore attached great importance to reforming the system and agreed with many of the Redesign Panel's proposals. A properly functioning, efficient and transparent internal justice system underpinned all efforts to strengthen accountability, oversight and human resources management reform. The deficiencies of the current system, which had led to the adoption of resolution 59/283, were well known.

53. The report of the Redesign Panel (A/61/205) correctly noted that a strengthened informal system could help resolve cases before they reached the litigation stage. Informal mediation minimized confrontation and could lead to conciliatory outcomes that were satisfactory to both staff and management. He therefore supported, in principle, the proposals to strengthen the Office of the Ombudsman, to establish a Mediation Division therein and to introduce a two-tiered system comprising the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. However, further details about those bodies would be required before any decisions were taken.

54. The Committee would also need the Secretary-General's report on disciplinary proceedings, specific information about cost-sharing arrangements with the funds and programmes, a clear framework of cooperation and coordination between the Office of Internal Oversight Services (OIOS) and the internal justice system, legal guidance from the Sixth Committee regarding draft statutes, and plans for transitional measures as the Organization moved from one system to another. He supported the establishment of an Office of Administration of Justice headed by an Assistant Secretary-General. The timely selection of a suitable candidate would help the Secretary-General implement reforms effectively. Lastly, he urged the other Committee members to complete the deliberations on the current proposals by the end of the sixty-first session.

55. **Mr. Rashkow** (United States of America) said that fundamental reforms were required to address staff members' and managers' concerns with the current system. With over 55,000 staff members, the United Nations required a transparent, efficient, fair and cost-effective internal justice system. As the Advisory Committee highlighted in its report (A/61/815), many of the Redesign Panel's recommendations would have significant cost implications that could not be quantified at the current time. It was therefore important to consider those recommendations in detail.

56. Effective, efficient and well-run organizations expected their employees and managers to resolve many workplace issues amicably, long before mediation or litigation was considered. His delegation therefore agreed that an effective mediation function was needed. It also agreed with the Advisory Committee that the Ombudsmen should play a greater role in encouraging staff to seek resolution through the informal system. However, allowing recourse to the formal justice system once an agreement had been reached via mediation was unnecessary, costly and time-consuming and should not be allowed, except in order to enforce the implementation of the mediated outcome.

57. Regarding the Redesign Panel's suggestion that the system should consider claims relating to the duties of an international organization to its staff, he said that the duties of the United Nations to its staff were currently embodied in the United Nations Staff Regulations and Rules adopted by the General Assembly. His delegation was concerned that adopting the proposed language would allow the justice system, rather than the General Assembly, to define new rights and duties.

58. His delegation was also concerned by the proposals to allow staff associations to bring class actions on behalf of their members. That was unnecessary because the normal way of bringing actions, without staff unions, had generally proved effective and efficient. It was also inappropriate because it would permit and encourage staff associations to use class actions as a means of pursuing administrative reforms, rather than seeking such reforms in the established manner through the General Assembly. Staff associations played an important role by supporting staff members in various ways, but should not be able to assert claims on their behalf.

59. The Secretary-General supported the Redesign Panel's recommendation that the current system should be extended to cover any person performing personal services under contract with the United Nations, including consultants and individual contractors. However, his delegation agreed with the Advisory Committee that such an extension was unjustified. The obligations of the United Nations to staff members, on the one hand, and persons outside the Organization, on the other, were not and should not be the same. Currently, individual consultants and contractors who could not resolve their disputes with the Organization informally could submit them to arbitration under guidelines established by the United Nations Commission on International Trade Law (UNCITRAL). Arbitration generally, and the UNCITRAL rules in particular, were widely recognized as a fair and appropriate alternative to litigation. If the system's scope was expanded as proposed, it would provide recourse to some 90,000 individuals. Without significant justification, the recommendation was too costly to endorse.

60. On the question of whether cases submitted to the formal justice system should be decided upon in the first instance by a single judge, as recommended by the Redesign Panel and the Advisory Committee, or by a panel of three judges, as proposed by the Secretary-General, his delegation supported the former position. As the Advisory Committee had rightly argued, the proposed two-tiered system, in which staff members could appeal against decisions taken in the first instance, provided sufficient safeguards to ensure that the law was properly applied.

61. His delegation joined the Secretary-General in opposing the Redesign Panel's recommendation concerning the award of punitive damages. Such damages, which involved the payment of large awards unrelated to the injury suffered by the claimant, were intended to force the entity engaged in improper behaviour to take corrective action. The award of such damages was not widespread; where they were allowed, they were generally awarded against private companies, not governmental entities such as the United Nations. In the Organization, it was the responsibility of the Secretariat and the General Assembly to identify and correct any pattern of improper conduct.

62. His delegation did not support the Secretary-General's recommendation that compensatory claims should no longer be subject to the limit of two years' salary or that the justice system should force one side in a dispute to perform specific actions. The existing cap of two years' salary for compensation awards was appropriate, given that most staff were engaged under fixed-term or indefinite contracts.

63. His delegation was concerned about the Redesign Panel's recommendation that staff should bear direct financial liability for their decisions. While there was a need to increase staff accountability, the proposal could seriously harm efforts by the United Nations to recruit

and retain staff. The existing standard, which allowed for personal liability only in cases of gross negligence and provided for the evaluation of individual performance, was sufficient.

64. Both the Redesign Panel and the Secretary-General supported the establishment of an office to provide legal assistance to staff members. While such an office could indeed provide general support and advice to staff members filing claims against the United Nations, more information was needed about its anticipated role, including the extent to which it reflected Member State practice. Proposals for alternative means of achieving the same objective should also be provided.

65. Lastly, while many of the reforms suggested by the Redesign Panel and supported by the Secretary-General had significant direct and indirect financial implications, only those with direct financial implications were adequately addressed. He would appreciate more information about the indirect costs that could arise from the Panel's recommendations. His delegation also joined the Advisory Committee in requesting more information regarding the cost-sharing arrangements proposed by the Secretary-General.

66. **Ms. Heimerback** (Norway) said that the rule of law must underpin all United Nations activity, including the internal administration of justice. Norway supported the establishment of an independent, two-tiered, professionalized system of formal justice. It also supported strengthening the mediation mechanism, providing staff with legal counsel and decentralizing the internal justice system. In general, Norway supported the Redesign Panel's recommendations.

67. The ongoing reform process was of crucial importance to the Organization's future. The flaws of the current internal justice system had been known for a long time. Corrections were overdue. Financial considerations should not serve as a justification for setting up an unsatisfactory system, particularly, in view of the Member States' pledge, in the Millennium Declaration, to ensure that the Organization was provided with the resources it needed to carry out its mandates.

68. **Mr. Aljunied** (Singapore) said that the reports before the Committee painted an alarming picture of a dysfunctional, ineffective, under-resourced and inefficient system of justice that failed to meet many basic standards of due process established in international human rights instruments. He expressed appreciation to the Redesign Panel for having the courage to confront sensitive issues and for proposing bold recommendations to overhaul the current system.

69. His delegation agreed with the Redesign Panel that the financial, reputational and other costs to the Organization of the current system were enormous and that effective reform of the United Nations required an efficient, independent and well-resourced internal justice system that would safeguard the rights and ensure the accountability of managers and staff. The limited progress made on human resources management reform the previous year demonstrated just how accurate such observations were. His delegation was pleased, however, that the Secretariat and senior management had overcome their initial reservations and accepted most of the Panel's recommendations, albeit with a number of proposed modifications.

70. The new internal justice system should be decentralized and cost-efficient and should ensure more effective informal dispute settlement. His delegation supported the establishment of an Office of Administration of Justice and a two-tiered system of formal justice, comprising the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. It was also in favour of strengthening and expanding the Office of the Ombudsman and establishing a Mediation Division at Headquarters.

71. There was an urgent need to expedite the consideration and resolution of cases in the formal system, which could take up to three years to complete. A clear example was the case of the Assistant Secretary-General for Central Support Services, a Singaporean national who, along with seven other staff members, had been placed on administrative leave in January 2006 on the basis of a draft Office of Internal Oversight Services (OIOS) report on United Nations procurement in peacekeeping operations. Six of those staff members had been reinstated, though some of them still faced allegations of mismanagement, which they were contesting. The OIOS Procurement Task Force had cleared the Assistant Secretary-General, in December 2006, of any criminal wrongdoing, but continued to allege managerial failings on his part, a claim that he was contesting. Unlike his colleagues, however, he had not been reinstated. The reason for that discriminatory application of justice was unclear.

72. The Singaporean delegation was therefore sceptical of the SMCC recommendation, endorsed by the Secretary-General, to replace the current process of administrative review with a management evaluation function. That proposal did not represent a substantive change from past practice; it would perpetuate the same mistakes and add another layer of bureaucracy, thus preventing staff members from approaching the United Nations Dispute Tribunal directly. The proposals contained in paragraph 30, subparagraphs (a) and (b), of the note by the Secretary-General (A/61/758), bordered on a conflict of interest. In addition, the 45-day deadline for completing management evaluations delayed the appeals process further and gave management too much lead time to initiate actions that could undermine the case in question.

73. Certain delegations were all too familiar with the bureaucratic manoeuvrings of the former Under-Secretary-General for Management and the former Deputy Secretary-General, who had used administrative review provisions to delay the consideration of staff matters before them. For example, the senior management of the previous Administration had prevented the Assistant Secretary-General for Central Support Services from lodging a complaint against the former Under-Secretary-General for Management with the Management Performance Board, even though the Special Adviser on the Establishment of the Ethics Office had recommended that course of action. Consequently, in February 2006 the Assistant Secretary-General had submitted a complaint of discrimination and harassment by the former Under-Secretary-General for Management to the Panel on Discrimination and Other Grievances. The Administration had taken eight months to establish a panel, which had still not concluded its work. As a result of the protracted delay, the Assistant Secretary-General had submitted an appeal to the Joint Appeals Board, which had rejected a claim by senior management that the appeal was time-barred. In view of that experience, the Singaporean delegation did not intend to encourage or support any proposals that might only perpetuate attempts by senior management to deny justice and due process to staff members.

74. His delegation agreed with the Redesign Panel's finding that the current system failed to meet many basic standards of due process established in international human rights instruments. In the case he had just described, the staff member had been suspended before an investigation had even been launched and, over 14 months later, had still not been charged; the draft OIOS report that had triggered the suspension had been leaked to the press before the Member States had even received the final report; and the staff member had not been given a copy of the draft report or an opportunity to comment on the allegations against him. Such was the absence of due process at the United Nations.

75. His delegation was pleased that the Redesign Panel had identified the accountability of both management and staff as an important element in the administration of justice framework. However, the key principle was that the current practice of selective accountability should stop and accountability should be applied across the board and at all levels.

76. Another issue related to the administration of justice was that of oversight and investigations. The report of the Secretary-General on the Procurement Task Force (A/61/603) had not been considered by the General Assembly. He had read the report, however, and had a number of questions. First, he wished to know what the Procurement Task Force's exact terms of reference were and whether they had been expanded without Member States' knowledge. The press had reported that, in light of the Procurement Task Force's conclusions, the United Nations had decided to remove at least two companies from its vendor database. He asked whether the Procurement Task Force had a mandate to recommend such actions. Apparently, the Task Force had also been pressuring individuals and vendors to cooperate with investigations. He wished to know more about the rules governing cooperation by individuals and vendors with the Task Force and the measures used by the latter to ensure cooperation. In particular, had there been any recent bulletins or notifications making it compulsory for all United Nations staff to cooperate with the Task Force?

77. He also enquired about the status of the procurement cases referred to in the report (A/61/603, para. 3). According to paragraph 7 of the report, the Task Force was expected to conclude its work on 31 December 2007. He asked how that assessment had been reached, whether the Procurement Task Force would cease to exist after December 2007 and whether that meant that all procurement cases would have been investigated by then. The report also stated that charges for the Procurement Task Force would be apportioned

between the peacekeeping budgets and the regular budget. Under what authority had that financial arrangement been approved? What was the Procurement Task Force's budget? How much of it had been spent?

78. **Ms. Li** Jun (China) said that her delegation agreed with the views expressed in the reports of the Secretary-General (A/61/758) and the Redesign Panel (A/61/205). Her delegation supported the establishment of a strengthened informal justice system to build trust, reduce costs and create a harmonious management culture. It also supported the proposals concerning a new two-tiered formal justice system.

79. More information was needed about the financial and management implications of extending the scope of jurisdiction of the formal and informal justice systems. Regarding the Secretary-General's proposal that management evaluation should be the first step in the judicial process, further details were required, since the proposal appeared to be no different from the existing administrative review process.

80. Since the goal of reforming the internal justice system was to strengthen management accountability, thereby reducing the number of disputes resulting from mismanagement and saving litigation costs, provisions such as individual financial accountability and other punitive measures should be implemented. The system should not be empowered to award exemplary or punitive damages, and the current maximum compensation level of two years' salary should be retained.

81. **Mr. Kishimoto** (Japan) said that his delegation concurred with the gist of the report of the Redesign Panel. The internal justice system had many shortcomings and needed to be re-examined. The informal system should be strengthened so that it could be relied upon to manage conflict resolution. Mediation should be the core function of the Ombudsman in the future, and its role should be clearly defined so that it would not duplicate the functions of the formal justice system.

82. The formal system should be consistent with the legal responsibilities and obligations of the staff. An independent and professional two-tiered system should be established. The advantages and disadvantages of the existing system, including the Joint Appeals Board and the Joint Disciplinary Committees, should be compared with the Secretary-General's proposals for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. In the future justice system, much would depend on how disciplinary proceedings were integrated into both the formal and informal systems.

83. A high level of legal education and understanding on the part of the staff was critical for the proper utilization of the justice system. However, that had always been the case. Therefore, it was difficult to understand what the functions of the proposed Office of Staff Legal Assistance would comprise. It seemed unnecessary for the Secretariat to provide legal services or representatives to file claims against the United Nations on behalf of staff, given the crucial role the Secretariat already played in disseminating information to staff. Lastly, in view of the importance of the proposed reforms, the Committee should discuss them thoroughly and should not take hasty decisions.

84. **Mr. Diab** (Syrian Arab Republic) said that a reformed system of internal justice was essential for safeguarding the rights of staff and holding managers accountable for their decisions. It was regrettable that the Secretary-General's note on the report of the Redesign Panel (A/61/758) had been submitted late. The Secretary-General had made new proposals in that note, in contravention of General Assembly resolution 59/283.

85. The Syrian Arab Republic supported the recommendations of the Redesign Panel, including the proposal for an Internal Justice Council and a two-tiered system of formal justice comprising a first level and an appellate level. Decisions at the first level should be rendered by one judge, not three as proposed by the Secretary-General. The new system should be operational by 1 January 2008.

86. It was crucial that the judges should be independent and have impeccable professional credentials, as well as a background in United Nations administrative and labour law. They should be selected bearing in mind the need for equitable geographical representation, and should be appointed at the Assistant Secretary-General level.

87. In the informal justice system, the administrative review process had led to delays. Eliminating it was a good idea. However, the management evaluation function proposed to replace it appeared to be the same mechanism under a new name. Lastly, his delegation

supported the proposals to strengthen role of the Ombudsman in the informal system.

88. **Mr. Sandoval** (Colombia) said that the due protection of the rights of staff members was at the heart of the United Nations justice system reform. The system must guarantee transparency, efficiency, independence and due process. His delegation agreed that the system should include formal and informal components, on the understanding that, under public and private international law, mediated outcomes were just as legally binding as court decisions. The use of the terms "formal" and "informal" to describe the two systems might therefore cause confusion. Consequently, the systems should be described as "judicial" and "extrajudicial", in line with the terms used in public international law, which were reflected in the Spanish versions of the relevant reports.

89. His delegation supported the idea of a two-tiered system of formal justice. However, such a system did not necessarily require two independent tribunals. Instead, there should be a single tribunal composed of a trial chamber (first instance) and an appeals chamber (second instance), with the latter reviewing decisions taken by the former. That proposal had several advantages: whereas two tribunals would require a separate statute and rules of procedure for each, potentially giving rise to conflicting interpretations, a single tribunal would have one statute and rules of procedure applicable to both chambers; justice would be administered more efficiently; jurisprudential consistency would be easier to ensure; the tribunal would be a single administrative entity; and costs would be rationalized.

90. **Mr. Aljunied** (Singapore) asked when answers would be provided to the questions he had posed in regard to the Procurement Task Force. While his delegation would prefer responses in a formal setting, given that the questions had been raised in a formal setting, a preliminary unofficial response would also be appreciated. That should be possible, as his delegation had distributed the text of its statement well before the meeting.

91. **Mr. Abelian** (Secretary of the Committee) said that various offices would have to be consulted before responses could be provided. As no representatives of the relevant offices were present at the current meeting, no one was available to provide preliminary responses.

Agenda item 117: Programme budget for the biennium 2006-2007 (*continued*)

Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or the Security Council (*continued*) (A/C.5/61/L.36)

Draft resolution A/C.5/61/L.36: Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or the Security Council.

92. *Draft resolution A/C.5/61/L.36 was adopted.*

Investing in the United Nations: for a stronger Organization worldwide: interim report: investing in information and communications technology (A/61/765 and A/61/804)

93. **Ms. Van Buerle** (Director, Programme Planning and Budget Division), introducing the report of the Secretary-General entitled "Investing in the United Nations: for a stronger Organization worldwide: interim report: investing in information and communications technology" (A/61/765), said that a comprehensive report on the same subject would be submitted to the General Assembly during the second part of its resumed sixty-first session.

94. The Secretary-General had taken note of the decision by the General Assembly to place the position of Chief Information Technology Officer in the Executive Office of the Secretary-General. After long consideration, the Secretary-General had concluded that the Organization would be best served if the Office of Information and Communications Technology was placed in the Department of Management and was requesting that the General Assembly should reconsider its decision.

95. Given the important role of information and communications technology (ICT) in the management reform agenda, and the cross-cutting nature of the terms of reference of the Chief Information Technology Officer, it was appropriate to situate the Office of Information and Communications Technology in the Department of Management. In addition, the Officer would be the first line of accountability for the enterprise resource planning system and other initiatives which were under the Department of Management.

96. **Mr. Saha** (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that the Advisory Committee's comments on the Secretary-General's interim report on information and communications technology were contained in document A/61/804. The Advisory Committee did not find adequate justification in the interim report for the proposal to reverse the General Assembly's decision and shift the post of Chief Information Technology Officer from the Executive Office of the Secretary-General to the Department of Management.

97. Further, the Advisory Committee noted that the interim report did not respond to the requests contained in section II of General Assembly resolution 60/283. The Advisory Committee trusted that the comprehensive report would do so. The Advisory Committee recommended that decisions on ICT structures, staffing requirements, roles and responsibilities should be taken up in the context of the General Assembly's consideration of the comprehensive report.

98. **Mr. Hussain** (Pakistan), speaking on behalf of the Group of 77 and China, recalled that, in its resolution 60/283, the General Assembly had requested the Secretary-General to provide detailed information on the structure and staffing requirements of the envisaged information and communication technology structure, as well as the lines of responsibility, the functions of the proposed structure and its relationship with other information and communication technology units in the Secretariat and offices away from Headquarters. The Group concurred with the Advisory Committee that the Secretary-General's report (A/61/765) did not respond to the General Assembly's request.

99. Also in its resolution 60/283, the General Assembly had decided to establish the post of Chief Information Technology Officer and to replace the Integrated Management Information System with a next-generation enterprise resource planning system, based on the Secretariat's assurances that it would submit the comprehensive report referred to in paragraphs 17 and 18 of the Secretary-General's earlier report on ICT (A/60/846/Add.1). The Group expected the Secretariat to explain, at a formal meeting, the reasons for its delay in providing that report. The Group had consistently stressed that the full implementation of General Assembly resolutions was an essential feature of proper accountability to Member States; it trusted that the report would be prepared without further delay and submitted to the Committee during the second part of the resumed sixty-first session.

100. The General Assembly had been told that the appointment of the Chief Information Technology Officer was crucial to the improvement of ICT policies. The Group was concerned that the Officer had not yet been appointed and urged that the post should be established immediately.

101. The Group was also concerned that the Secretary-General's report did not respond to the General Assembly's request for proposals on ways to increase the use of open-source software in the secretariats. Again, Member States had been assured that the Secretariat intended to address the issue in the comprehensive report.

102. The Group further regretted that the Secretary-General's report did not respond to paragraphs 13 and 15 of General Assembly resolution 61/233. Prior to the adoption of the resolution, the Secretariat had assured the Committee that it would be able to report on the decisions of the accounting task force regarding the implementation of the International Public Sector Accounting Standards and the development of the enterprise resource planning system. It was unfortunate that those undertakings had not been carried out. Since the new ICT system could be costly, Member States required assurances that the Secretariat was proceeding as expected and was coordinating with other United Nations entities.

103. It was important that lessons learned from past projects should be taken into account in the implementation of the ICT strategy. It was equally important to develop a comprehensive information management strategy that responded to the entire set of organizational requirements. The ICT system should support the results-based management process and should be able to handle all planning, programming, budgeting, monitoring, evaluation and reporting functions in an integrated manner.

104. The General Assembly had acted in good faith by agreeing to establish the post of Chief Information Technology Officer and to replace the Integrated Management Information System with a next-generation enterprise resource planning system even before it had had the opportunity to consider the details of the proposals. The Group trusted that the Secretariat

would make a greater effort to implement General Assembly resolutions in future.

105. **Mr. Fermín** (Dominican Republic), speaking on behalf of the Rio Group, said that efficient and modern management in the Organization must be supported by advanced information technology which harmonized and simplified procedures and suitably integrated operations at Headquarters and in the field. Information technology could be an efficient means of promoting change while ensuring continuity of strategy and unity of action in all departments. The Rio Group awaited with interest the information which the Secretariat was due to present during the second part of the resumed sixty-first session in response to the requests made by the General Assembly in its resolution 60/283, and also looked forward to further considering the issue of open-source software. Noting that the Secretariat had supplied details of the proposed functions and organizational placement of the Office of Information and Communications Technology, his Group looked forward to discussing the matter further in informal consultations.

106. **Ms. Kaji** (Japan) said that her delegation shared the views expressed by the Advisory Committee in its report (A/61/804). Careful consideration should be given to the ICT system as a whole in the context of the comprehensive report to be submitted by the Secretary-General. Those discussions should be consistent with the General Assembly's deliberations on the Secretary-General's proposals on structural reform.

The meeting rose at 1.10 p.m.